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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

Clerk, U.S. District Court
District Of Montana
Billings

MARK R. BARRETT, Plaintiff, vs. MICHAEL J. ASTRUE, Commissioner of Social Security, Defendant.	Case No. CV-11-143-BLG-RFC ORDER ADOPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE
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United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation (doc. 22) as to the parties' cross-motions for summary judgment in this action seeking an appeal of the Commissioner's denial of disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-403. Magistrate Judge Ostby recommends this matter be remanded with directions that the Administrative Law Judge consider additional evidence.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). No party filed objections to the September 26, 2012 Findings and Recommendation. The parties' failure to object waives any objection to the findings of fact, *Turner v. Duncan*,

158 F.3d 449, 455 (9th Cir. 1999), but this Court must still review de novo any conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).


After a de novo review, it is clear that Magistrate Judge Ostby properly applied *Brewes v. Commissioner of Social Security*, 682 F.3d 1157 (9th Cir. 2012) and *Mayes v. Massanari*, 276 F.3d 453 (9th Cir. 2001) in concluding that this case must be remanded to the Commissioner for consideration of Dr. Jenkins's report in light of the record as a whole. Magistrate Judge Ostby's Findings and Recommendations (doc.22) are therefore adopted in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that:

- (1) Barrett's motion for summary judgment (doc. 15) is **DENIED** to the extent it seeks a remand for award of benefits, but **GRANTED** to the extent it seeks remand;
- (2) the Commissioner's motion for summary judgment (doc. 18) is **DENIED**; and
- (3) this matter is **REMANDED** to the Commissioner for further proceedings consistent with the Findings and Recommendations .

The Clerk of Court shall notify the parties of the entry of this Order and close this case.

DATED the 27th day of November, 2012.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE